



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,501	01/10/2002	Mike Moran	24523-09665	9175
758 7590 04/07/2009 FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041				
EXAMINER				
TANG, KARIN C				
ART UNIT		PAPER NUMBER		
2451				
MAIL DATE		DELIVERY MODE		
04/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/043,501

Applicant(s)

MORAN ET AL.

Examiner

KAREN C. TANG

Art Unit

2451

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-79 is/are pending in the application.
- 4a) Of the above claim(s) 40-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

- A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/28/09 has been entered.
- Claims 40-78 are withdrawn from consideration as being a non-elected invention due to the communication filed on 11/28/08
- Claim 79 are presented for further examination.
- Claims 1-39 is cancelled by applicant.

Response to Arguments

Applicant's arguments with respect to claim 79 have been considered but are not persuasive.

1) Applicant argues that on the Office Communication filed on 11/28/08, Group 1 and Group 2 should not impose serious burden on the Examiner.

Examiner disagrees. As quoted by applicant's own response filed on Page 14 of the response, the "Group II describes a specific type network analysis by determining whether network traffic is priority or non-priority, while group I recites analyzing data responsive to trigger conditions"

Applicant's above statement has answered one of the reasons why it would impose a serious burden on Examiner on performing examining if not restrict both group of claims. Again, it is clear that Group I and Group II are two separate and distinct utilities, and the search required for Group II is not required for Group I, therefore, it is restated that the since applicant has received an action on the merit for the originally presented invention (i.e., Group I) , and this invention has already constructively elected by original presentation for prosecution on the merits. Accordingly, the office would like to make it clear that the Group II , Claims 40-78 is now withdrawn from consideration as being directed to a non-elected invention. (see 37 CFR 1.142(b) and MPEP 821.03.

Applicant has newly entered claims is now under examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 79 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A system comprising plurality of “modules” and only appear to contain software frame work, therefore, “A system” comprising plurality of software is considered as a software per se, which is not one of the categories of statutory subject matters.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sharon et al hereinafter Sharon (US 6,137,782) and Wacławsky et al hereinafter Wacławsky (US 5,975,457).

1. Referring to Claim 79, Sharon indicates an application monitoring system (refer to abstract), comprising: (a) at least one media module (agent, network element, refer to Col 4, Lines 5-20, Col 3, Lines 40-67) coupled to an associated network segment (refer to Col 5, Lines 9-25) on which a network application is running (refer to Col 3, Lines 50-67), each media module monitoring and collecting data relating to traffic (refer to Col 2, Lines 1-35) on the associated network segment corresponding to the network application (software packages, refer to Col 1, Lines 54-67) and for analyzing, responsive to a trigger condition (instruction, received from the CME, refer to Col 6, Lines 1-5) the collected data for traffic information (refer to Col 3, Lines 50-67 and Col 5, Lines 5-15), wherein each media module is tailored for network analysis (38, refer to Fig 2 and Abstract) and is configurable to a monitoring mode or a focus mode to monitor and collect data (refer to Col 6, Lines 45-67, Col 7, Lines 1-9) ; and (b) an application server module (CME, refer to Col 3, Lines 25-55) coupled to the at least one media module (network elements, agents, refer to Col 3, Lines 25-55) for receiving the collected data and the analyzed

data (refer to Col 6, Lines 35-67 and Col 7, Lines 1-25) and the analyzing the data for improving the performance of the network application (software packages, refer to Col 1, Lines 50-67, Col 2, Lines 55-67; reducing the redundancy of collected data, refer to Col 5, Lines 5-25, which reduce unnecessary processing time by the CME) and for configuring the trigger condition and for transmitting the trigger condition to the at least one media module (refer to Col 6, Lines 1-20, and Col 7, Lines 5-22 and Lines 40-67); modifying a trigger condition indicating when to collect and analyze the data (each time data packet is transmitted through network, is the condition, refer to Col 6, lines 1-20).

Although Sharon disclosed the invention substantially as claimed, Sharon did not explicitly disclosing that "media module including a flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment;

the application server module associating a user with the collected data and the analyzed data and generating a user specific log file including the collected data, the analyzed data and the associated user".

Waclawsky, in an analogous art disclosing that "media module including a flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment (refer to Col 4, Lines 40-67);

the application server module associating a user with the collected data and the analyzed data and generating a user specific log file including the collected data, the analyzed data and the associated user (refer to Col 7, Lines 1-15)".

It would have been obvious to one of ordinary skill in the art to combine Sharon and Waclawsky because Waclawsky's teaching of "media module including a flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment; the application server module associating a user with the collected data and the analyzed data and generating a user specific log file including the collected data, the analyzed data and the associated user" because it could improve the system of Sharon since by implementing these limitation, the system will be easier for the network management to quickly identifying the traffic conditions in the network

Conclusion

Examiner's Notes: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen C. Tang whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571)272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karen C Tang/

Examiner, Art Unit 2451